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**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: Phyllis Liethem et al.

Serial No: 09/863,585

Filed: May 16, 2001

For: **ABSORBENT PRODUCTS AND METHODS OF
PREPARATION THEREOF**

Group Art Unit: 3761

Examiner : D.W. Ruhl

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William Spatz
Name of Applicant, Assignee or Registered
Representative

William Spatz
Signature

May 26, 2007
Date of Signature

APPELLANTS' REPLY BRIEF

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

Sir:

Applicants submit this Brief, in triplicate, in reply to the Examiner's Answer mailed

March 26, 2007.

The Final Rejection which is under appeal rejected Appellants' claim 104 as obvious under 35 U.S.C. §103(a) over U.S. Patent No. 3,658,064 to Pociluyko (hereinafter "**Pociluyko**") in view of U.S. Patent No. 2,083,575 to Novak (hereinafter "**Novak**").

I. The Examiner's Rejection and Answer

The Examiner has stated that **Pociluyko** discloses an absorbent article comprising a fluid permeable topsheet layer, a substantially fluid impermeable backsheet layer and a sublayer of fluff material. The Examiner has conceded that **Pociluyko** did not disclose a method of manufacturing his fluff material and did not suggest that **Pociluyko** discloses the use of based treated pulp. The Examiner states that **Novak** discloses a method of making fluff pulp capable of being used in personal hygiene articles which comprises treating a wood fiber pulp containing wood fibers with a base at cold temperatures.

Applicants have argued that the Examiner's reliance upon the combination of **Pociluyko** and **Novak** to arrive at the present invention was misplaced because neither **Pociluyko** nor **Novak** suggest that the **Novak** pulp would be suitable for use in the claimed method to make absorbent composites. Further, **Novak** does **not** teach that his pulp is fluffed. The pulp product of **Novak** is a wet-laid felt and not a fluff material as the Examiner alleged. As explained in the present Specification at page 14, lines 10-23, to fluff a wood fiber pulp, it must first be dried and then subjected to dry shredding in a Hammermill or other attrition mill. In contrast, **Novak** describes introducing sheets of pulp into a Holland beater "with sufficient water to allow the stock to properly circulate." After the stock of **Novak** is separated, it is dumped into a stock chest and run off on a paper machine in the usual manner to make felt-like paper. See **Novak**, col. 2, line 54 to col. 3, line 16. Accordingly, **Novak** clearly describes the manufacture of wet-laid paper, not a fluff pulp, which is dry shredded.

The term “fluff” must be interpreted in light of the Specification, and it is not necessary to read anything into the claims to distinguish the “fluff” of the present claims from the felt of **Novak**, as “fluff” has only one meaning as applied to pulp in the Specification and in the cited prior art.

Applicants further argued that those skilled in the art could not substitute the felt of **Novak** for the fluff material of **Pociluyko** to produce the presently claimed invention as the Examiner has concluded.

II. The Board’s Decision in Appeal No. 2005-2682

The Examiner has cited the Board’s decision in the above Appeal involving related Application No. 09/334,125 as potentially directly affecting or having a bearing on the Board’s decision in the pending Appeal. The Examiner’s failed to mention that the Applicants timely requested Rehearing of the Board’s decision which was mailed October 21, 2005 by a Request for Rehearing which was filed by mail on December 21, 2005. It is believed that this Request for Rehearing has not been acted on because the Examiner improperly issued a Notice of Abandonment in Application No. 09/334,125 on November 11, 2005, long prior to Appellants’ deadline for requesting rehearing, and has failed to withdraw this Notice of Abandonment despite written and telephone requests.

In Appeal No. 2005-2682, the Board found that “[t]here’s no dispute that Pociluyko, like appellants, discloses a method for making an absorbent composite useful for personal hygiene products comprising interposing a fluffed pulp layer in between a fluid permeable topsheet layer and a fluid impermeable backsheet layer. Pociluyko is silent with respect to whether the pulp layer is subject to chemical crosslinking. However, notwithstanding whether Novak discloses a method of making fluff pulp, as urged by the examiner, we find that it would have been obvious

for one of ordinary skill in the art to make the fluff layer-containing composite of Pociluyko without chemically crosslinking the pulp. Since appellants acknowledge that it was known in the art to make wood pulp fluff by the claimed method, with the exception of including chemical crosslinking, we find that it would have been obvious for one of ordinary skill in the art to perform that known technique in making the fluff pulp of Pociluyko, without the chemical crosslinking. It is well settled that the elimination of a feature disclosed by the prior art along with its attendant function and advantage is a matter of obviousness for one of ordinary skill in the art.” (*Emphasis added*)

The Board went on to state that appellants base no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the inference of obviousness established by the prior art.

III. The Board’s Rejection in Appeal No. 2005-2682
 Ignores the Pociluyko’s Pulp is Not Base Treated

The Board found that it would have been obvious for one of ordinary skill in the art to make the fluff layer-containing composite of Pociluyko without chemically crosslinking the pulp, but ignores that the claims in Application No. 09/334,125 require that the wood fiber pulp used to make the fluff layer be first treated with a base at room temperature (in the presently appealed claim that the wood fiber pulp is “cold caustic extracted”). Thus in both Application No. 09/334,125 and in the Application currently under appeal, Appellants have not merely eliminated a feature with its attendant function and advantage, they have added a new feature not suggested by the cited prior art, namely the substitution of base or caustic treated fluff pulp for conventional fluff pulp. Since nothing in the cited reference suggests the advantage of using based treated fluff pulp in the claimed method of prior Application No. 09/334,125 or cold

caustic extracted fluff pulp in the product of the claim presently under appeal, finding these claims obvious in view of Pociluyko is not justified. In view of this, Appellants have respectfully requested that the Decision in Appeal No. 2005-2682 be withdrawn, and now argue that sustaining the rejection of the product claim currently under appeal would be improper for the same reason.

IV. Appellants Had No Reason to Provide Evidence of Nonobviousness

Appellants further submit that since the Examiner did not reject the claims on the basis that it would be obvious to one of ordinary skill in the art to make the fluff layer containing composite of Pociluyko without chemically crosslinking the pulp, the Examiner's rejection was fully overcome by the arguments submitted in Appellants' briefs. It is only the Board's rejection in Appeal No. 2005-2682, which was a new rejection in that Appeal and which would also be a new rejection in this Appeal, which could arguably require evidence of nonobviousness to demonstrate unexpected results. Accordingly, if the Board does not reverse the Examiner's rejection based on the arguments in Section III, Appellants respectfully submit that the Board should either consider evidence of nonobviousness presented herein or remand this case to the Examiner so that evidence of nonobviousness can be considered by the Examiner.

V. Examples in the Application as Filed Demonstrate the Unobviousness of the Claimed Invention

Prior to the present invention, it was not believed to be possible to achieve the absorption, insult (or re-wetting), liquid retention, softness and pad integrity of modern absorbent composites without employing chemically crosslinked wood fiber pulp. In the production of absorbent devices such as baby diapers, incontinence and catamenial devices and wound dressings (i.e. absorption intensive devices) which contain wood fiber pulp, it has been conventional to use

chemical crosslinking to increase the stiffness of the wood fiber pulp fibers, so that a fiber matrix made from them retains its bulk and pore volume when wet, thereby enhancing its absorbency (Specification at page 2, line 16 to page 3, line 10; and U.S. Patent No. 3,932,209 to **Chatterjee**, Col. 1, lines 35-40). The Specification of the present application at page 2, lines 16 to 22 also references several prior patents directed to the use of chemically crosslinked wood fiber pulp in absorbent composites. The Examiner's initially cited art of record, **Chatterjee**, is another such example. The present invention surprisingly discovered that by employing cold caustic extracted fluffed wood fiber pulp according to the process of the invention, an absorbent composite with desirable absorbency properties for use in personal hygiene devices could be formed without chemically crosslinked wood fiber pulp. The avoidance of chemically crosslinked wood fiber pulp was the expressed objective of the present invention (Specification at page 1, lines 6-12).

The Applicants subjected dozens of pulps to base treatment at a variety of conditions and then subjected those samples to exhaustive testing, including absorbency testing. By this testing, which is referenced in the instant application in the Examples reported at pages 16, 17, 22, 23, 26-32, 39-41, 45-47, 50, 52, 56, 58, 60, 61, 64, 66, 69 and 71, Applicants discovered that wood fiber pulp which is cold caustic extracted and fluffed has absorbency properties, softness and strength which are materially superior to those of conventional fluff pulp, and sufficient to enable its use in the claimed absorbent devices without chemical crosslinking.

V. Conclusion

In light of the above, Applicants respectfully request that the final rejection be reversed and that Applicants' claims be deemed patentable and allowed.

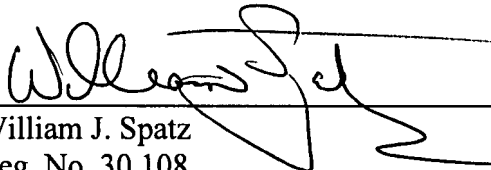
No fees are believed due. However, the Commissioner is hereby authorized to credit overpayments or charge any necessary fees to Deposit Account No. 50-0540.

Dated: May 26, 2007

Respectfully submitted,

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